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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 1075 97

SAMUEL J. KATZBERG, LOUIS HAIG AND JACOB F. SCHMITT,

Petitioners,

vs.

THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS AND BRIEF IN SUPPORT THEREOF.

DAVID STECKLER,
Counsel for Petitioners.

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PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS OF THE UNITED STATES.

To the Honorable the Supreme Court of the United States:

The petition of Samuel J. Katzberg, Louis Haig and Jacob F. Schmitt, respectfully shows:

1. They are citizens of the United States and reside in the City and State of New York.

2. This petition seeks a review of a decision of the Court of Claims of the United States, sustaining a demurrer by the defendant to a petition filed by the petitioners in that court for the recovery of a reward offered by the Commissioner of Internal Revenue, and ordering the dismissal of the petition.

3. The ground upon which the petition was dismissed was that it did not set forth facts furnishing any ground of relief against the United States, in that the offer of reward

did not state a definite sum offered by the defendant, and therefore no contract arose from the offer of reward and the giving of the information by the petitioners. The decision was filed March 3, 1941, and is reported in Case No. 45,289 March 3, 1941 (91 Ct. Cls. —).

Statement.

4. The petitioners in the court below alleged that they were entitled to recover from the defendant compensation in excess of $5,000 for furnishing information to the defendant which led to the detection and punishment of Isidore Goldberg and others named in the petition, for violating the Internal Revenue laws, and the recovery by the defendant of a sum in excess of $50,000 in income taxes of which the treasury was defrauded.

5. The statute under which the reward was offered is Section 1242 of Title 26 of the United States Code, Section 3463 Revised Statutes, reading as follows:

> "The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized to pay such sums, not exceeding in the aggregate the sum appropriated therefor, as he may deem necessary for detecting or bringing to trial and punishment persons guilty of violating the Internal Revenue laws, or conniving at the same, in cases where such expenses are not otherwise provided by law."

6. Pursuant to said statute the Commissioner of Internal Revenue promulgated Department Circular No. 147 of 1899, known as "Internal Revenue, No. 99-5th Revision." Its material parts are as follows:

> "Rewards for information leading to the Detection and Punishment of Persons violating the Internal Revenue Laws:
>
> "Under and by virtue of the provisions of Section 3463 of the Revised Statutes of the United States, which

authorize the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to pay such sums as he may deem necessary, not exceeding in the aggregate the sum appropriated therefor, for detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws, or conniving at violations of the same, in cases where such expenses are not otherwise provided for by law, I do hereby, with the approval of the Secretary of the Treasury, offer for information given by persons other than officers of internal revenue, or persons appointed or employed in, or acting in connection with, the Internal Revenue Service, that shall lead to the detection and punishment of persons guilty of violating the internal revenue laws, or conniving at the same, whether such punishment be by fine or other pecuniary mulct or penalty, or by forfeiture of property, such reward as the Commissioner of Internal Revenue may deem suitable, but in no case exceeding 10 percent of the net amount of fines, penalties, forfeitures, and taxes, which by reason of said information shall be recovered by suit or otherwise and actually paid to the United States, or of any sums which shall be accepted in compromise by the Commissioner of Internal Revenue and received by the United States.

* * * * * * *

"The rewards hereby offered must be understood to be limited in their aggregate to the sum appropriated therefor.

* * * * * * *

"Claims for reward under the provisions of this circular should be made on Form No. 211, which will be furnished by Collectors of Internal Revenue on request therefor.

D. H. Blair,
Commissioner.

Approved,
A. W. Mellon,
Secretary of the Treasury."

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7. It is to be noted that Section 3463 of the Revised Statutes does not authorize or empower the Commissioner of Internal Revenue to fix a maximum of compensation, nor that the same shall be based upon any recovery of fines, penalties, forfeitures or taxes, which by reason of the information furnished might be recovered by the Commissioner, except that it fixes the limit as "such sums, not exceeding in the aggregate the sum appropriated therefor, as he may deem necessary".

8. By Act of Congress of March 15, 1934, Congress appropriated to the Bureau of Internal Revenue $100,000 for the year ending June 30, 1935, to pay "for detecting and bringing to trial persons guilty of violating the internal revenue laws, including payments for information leading to the detection of such violators".

9. The petition, after setting forth the statute and the substance of the circular, alleged that for some years prior to 1934, Isidore Goldberg and two of his companies were engaged in the wholesale millinery business and were importing merchandise, and that in making these importations were engaged in cheating and defrauding the defendant out of its customs and internal revenues to the defendant's detriment in large and substantial sums; that on November 27, 1934, the petitioners gave original information to a customs officer at New York and to the Secretary of the Treasury of these frauds on the customs, and that at their request and in the due course of his procedure, a customs officer at the same time notified the Internal Revenue office of the frauds with the view of investigating the same; that in January 1935, the petitioners orally and in writing again advised the customs officers and the Intelligence Bureau of the Collector of Internal Revenue in New York, that the importers had not only been guilty of frauds on the customs, but that in order to cover up such frauds had committed

frauds upon the internal revenues of the defendant. The petition specifically referred to the income tax returns filed by I. Goldberg, Inc. for the years 1932 and 1933, I. Goldberg & Sons for the years 1933 and 1934, and Eigee Millinery Corp. and I. Eihner (R. 2-3).

10. The petition also alleged that the information thus given led to the recovery by the defendant of customs duties unlawfully withheld, by reason of which the petitioners filed a claim for reward under Sec. 619 of the Tariff Act of 1930, which claim was allowed and partly paid by the Secretary of the Treasury; that the information so furnished to the defendant's officers also led to the detection and punishment of the persons guilty of violating the Internal Revenue laws and to the recovery of fines, penalties, forfeitures and taxes; that among the sums so recovered was the sum of approximately $50,000 received by transfer from the Collector of Customs to the Commissioner of Internal Revenue of refunds of customs duties to which such importers were entitled to receive from defendant (R. 3).

11. The petition also alleged that about January 18, 1937, petitioners made claim for the reward offered by the Commissioner of Internal Revenue; that the Commissioner of Internal Revenue disallowed and rejected the claim without notice or hearing, despite the fact that petitioners' claim for customs reward had been allowed; and that such disallowance and rejection were arbitrary and capricious.

12. Notwithstanding the fact that the circular letter of the Commissioner of Internal Revenue offered a sum not "exceeding 10%" of any recovery actually paid to the United States, the Court below determined that "no definite or ascertainable sum was offered, and therefore no contract arose from the offer of reward and the giving of information by plaintiffs." Its decision was based upon a prior

decision made by the Court below in the case of Abraham L. Gordon, Case No. 45170, decided by the Court of Claims February 3, 1941 (91 Ct. Cls. —), where the precise question was presented.

Questions Presented.

13. The questions presented are:

(a) Whether the contract was void for want of definiteness in failing to state a definite sum offered by way of reward?

(b) Whether the petitioners were not entitled to recover upon quantum meruit for their services even if the contract was lacking in definiteness?

(c) Whether the petition below sets forth sufficient grounds entitling the petitioners to relief against the respondent?

Reasons for Allowance of Writ.

14. The reasons relied on by petitioners for allowance of the writ are as follows:

(a) The policy of the Treasury Department from time immemorial has been to offer rewards for the detection and punishment of violators of the customs and internal revenue laws in order to encourage informers to aid the government in protecting its revenue, and in the case of the customs a specific reward of 25% of the amount recovered is provided for in tariff acts running back many generations, the latest of which is the Tariff Act of 1930 (Sec. 619). In the case of internal revenue, the statute (Sec. 3463 Revised Statutes) does not specify any particular sum, leaving it to the Commissioner, with the approval of the Secretary of the Treasury, to pay rewards not exceeding the sum appropriated by Congress therefor. However, the Commissioner

of Internal Revenue, instead of fixing the reward in a specific sum, stated in his circular letter that it shall be such sum as he shall deem suitable, "in no case exceeding 10% of the net amount of fines, penalties, forfeitures and taxes * * * recovered by suit or otherwise and actually paid to the United States."

(b) The Commissioner of Internal Revenue for more than fifty years has generally paid the maximum of 10%, and the public at large has so understood the circular. Certainly the public has understood the Commissioner's circular letter to mean that a reward would be paid for information furnished to him by the informer, and that he would not, after receiving the information, tell the informer that the offer of reward was void and unenforceable for indefiniteness.

(c) There are many claims for reward filed with the Commissioner of Internal Revenue, and on the basis of the decision of the Court below it is entirely within the power of the Commissioner to reject them all for indefiniteness, notwithstanding the intent of the statute that a reward would be paid.

(d) Were the public in general to know that the statute and the circular letter are unenforceable, it would discourage informers from giving any information to the Government, and thus deprive the Government of the protection of the revenues afforded to it by the aid of informers.

(e) The question decided by the Court below was an important Federal question involving as it does also the validity of the Commissioner's regulation, which has the force of law, and which should be settled by this Court.

(f) The questions here presented have never been passed on by this Court.

WHEREFORE, petitioners pray that a writ of certiorari may be issued out of, and under the seal of this Court, directed to the Court of Claims of the United States, commanding that Court to certify and send to this Court, on a day certain to be designated therein, a full and complete transcript of the record of all proceedings of the said Court in this cause, to the end that the same may be reviewed and determined in this Court; and that the final order of the said Court, and every part thereof, may be reviewed and corrected by this Court in conformity with the Constitution and laws of the United States; and that the said final order may be reversed and the Court below directed to proceed to fix and determine the fair and reasonable compensation to which the petitioners are entitled, not exceeding 10% of the recoveries made by the United States in connection with the violations as to which the petitioners' information was given; and petitioners pray for such other and further relief as to this Court may seem just and proper; and petitioners will ever pray.

Dated, New York, N. Y., May —, 1941.

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